280, 61 N. W. 588; Howland *v.* Flood, 160 Mass. 509, 36 N. E. 482). While in these cases the question of malice was submitted to the jury, the offending statements were not argumentative or qualified as here, but were positive assertions of fact. Yet in each of these cases the court held that proof of falsity alone was not conclusive of malice. Here the statement was not that appellants' advertisements were false in that they were not actually selling $25 suits for $15, but that they could not do so and continue it for long without a crash—clearly a mere expression of opinion. Authority is not wanting that such conditional imputations are not libelous (Ingalls *v.* Allen, Breese, 1 Ill. 300; Mills *v.* Taylor, 3 Bibb. Ky. 469; Blackwell *v.* Smith, 8 Mo. App. 43). Be that as it may, they were not sufficient to take the case to the jury on the question of malice, through mere proof of the falsity of the conclusion, which is all we have here."

Libel and Slander—Privileged Communication by Military Officer. —In Gray *v.* Mossman, 88 Conn. 247, it was held that "a written expression of opinion by a captain respecting the fitness for promotion of a member of his company, and the probable effect of such promotion upon the company and the military service, made in response to a request from his superior officer, is upon its face a privileged communication, and can become actionable only upon proof that the statements therein contained were not only false and defamatory, but were published with malice, that is, with an unjustifiable motive." The communication complained of was as follows:

"SIXTH CO., C. A. C., C. N. G.
NORWALK, Dec. 22, 1909.

Respectfully forwarded to the Adjutant C. A. C., with the explanation that Sergt. Horace M. Gray is an unusually bright, clever man, but has such an unfortunate personality that if he advanced higher the company would suffer grievously. The commanding officer, C. A. C., knows Sergt. Betts. Sergt. Frank Rooney, an exsergeant of the regular army, has the confidence of his officers and the respect of the men. ALBERT MOSSMAN,
Capt. 6th Co., C. A. C., C. N. G., Commanding."

In the opinion the court said:

"If the jury had properly found these words to have been false, under the charge they must have found that they were published in the exercise of a military privilege. In order to hold the defendant liable for publishing a privileged communication of that character, it was essential for the jury to have found that the defendant was actuated by malice in making the publication. In answer to an interrogatory the jury so found. Malice in this sense means that the defendant was actuated by an unjustifiable motive. We have

searched the evidence in vain to satisfy ourselves that this conclusion could be reasonably reached from the evidence. We are of the opinion the trial court did not err in granting the motion to set aside the verdict."

Police Power—Authority of Municipality to Impose License Tax on Golf Courses.—The question whether the good game of golf is subject to the exercise of the police power of a municipality was answered in the negative in the case of Condon *v.* Village of Forest Park (Ill.), 115 N. E. 825, wherein the Supreme Court affirmed a decree of the lower court enjoining the municipality from attempting to enforce a village ordinance imposing a license tax on golf courses. The court said: "The police power of the state extends to the protection of the lives, health, comfort, and quiet of all persons and the protection of all property within the state. In the exercise of that power the General Assembly may suppress and prohibit any practice, trade, or business endangering the public welfare and safety or may regulate any business in such manner as may be necessary for the safety, morals, and welfare of the people and may delegate that power to municipalities. It is for the courts to determine what are the subjects for the exercise of the police power and to determine whether an attempted exercise of the power in a particular instance is reasonably necessary to the comfort, morals, safety, or welfare of the community, and the power is restricted by those provisions of the constitution which forbid unequal laws or an arbitrary invasion of personal rights of property. To sustain an act or ordinance under the police power the court must be able to see that it tends in some degree to the prevention of offenses or the preservation of the public health, morals, safety, or welfare. If it is manifest that a statute or ordinance has no such object, but under the guise of a police regulation is an invasion of the property rights of the individual, it is the duty of the court to declare it void. * * * The game of golf is a healthful and harmless recreation of the same class as lawn tennis and other like games, which do not attract crowds or tend to disorder or call for police supervision or regulation. It has never been known to affect in any injurious way the public health, order, safety, or morals. The fact that the game has attractions which induce players to practice it does not change its character to an amusement or entertainment provided for the public. It is not a subject for the exercise of the police power."

Seduction—Parties within Meaning of Statute—Virginia Decision Criticised.—That a widow is considered within the meaning of the South Dakota Penal Code, defining the crime of seduction is held in the case of State *v.* Eddy (S. D.), 167 N. W. 392. The words of the statute designating the person subject to seduction as "an un-